

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRED REEVES,

Plaintiff,

Hon. Wendell A. Miles

v.

Case No. 4:04 CV 58

FREDERICK BANDT, et al.,

Defendants.

ORDER

For the reasons discussed herein, the Court hereby dismisses Plaintiff's claims against Defendants Sickler and McClure, thereby terminating this matter.

Pursuant to Federal Rule of Civil Procedure 41(b), the Court may involuntarily dismiss "any claim" for "failure of the plaintiff to prosecute or to comply with these rules or any order of court." Moreover, the Court can effect such a dismissal sua sponte. *See Hall v. White*, 1987 WL 37304 at *1 (6th Cir., May 8, 1987) (citing *Link v. Wabash Railroad*, 370 U.S. 626 (1962)) ("a federal court has the authority to dismiss a case sua sponte with prejudice under Rule 41(b) for failure to prosecute"); *LeSane v. Hall's Security Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (same).

The present action was initiated on April 19, 2004, against Defendants Bandt and Barber. On May 5, 2004, the Court directed that Plaintiff's complaint be served and service was subsequently effected on both Defendant Bandt and Barber. On November 15, 2004, Plaintiff amended his complaint to assert additional claims against Defendants Sickler and McClure. The following day, summonses were issued for Defendants Sickler and McClure and delivered to the United States Marshal for service.

On November 24, 2004, the summons for Defendant McClure was returned unexecuted. On November 30, 2004, the summons for Defendant Sickler was returned unexecuted. On February 18, 2005, Plaintiff submitted to the Court an address at which he believed service on Defendant McClure could be effected. On March 11, 2005, a second summons was issued for Defendant McClure and delivered to the United States Marshal for service. On March 28, 2005, this summons was returned unexecuted.

On March 31, 2005, the Court dismissed Plaintiff's claims against Defendants Bandt and Barber. Service has not yet been effected on Defendants Sickler or McClure. In the previous two and one-half years Plaintiff has never requested assistance in effecting service on these Defendants. Considering Plaintiff's lack of diligence in attempting to effect service on these Defendants, the Court hereby orders that Plaintiff's claims against Defendants Sickler and McClure be dismissed with prejudice for failure to prosecute.

IT IS SO ORDERED.

Date: September 21, 2007

/s/ Wendell A. Miles
WENDELL A. MILES
United States District Judge